

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(CENTRAL DIVISION)

ELIZABETH R. STEFFENBERG,
Plaintiff

v.

T. GENE GILMAN, et. al.
Defendants.

CIVIL ACTION NO. 04-40113-FDS

**JOINT MOTION OF PLAINTIFF AND DEFENDANT AVIVA LIFE INSURANCE
COMPANY TO DISMISS CLAIMS WITH PREJUDICE**

Pursuant to Fed. R. Civ. P. 41(a)(2), the Plaintiff, Elizabeth R. Steffenberg ("Steffenberg") and the Defendant, Aviva Life Insurance Company ("Aviva Life") jointly move, pursuant to Fed. R. Civ. P. 41(a)(2), to dismiss all claims against Aviva Life and Aviva USA Corporation ("Aviva USA") (previously dismissed without prejudice) with prejudice. As set forth more fully in the accompanying joint memorandum, Steffenberg and Aviva Life reached a good faith settlement of all claims against Aviva Life. The Defendant, David M. Scoll ("Scoll"), has impaired the settling parties' attempts to resolve claims between them by improperly and unnecessarily refusing to assent to the stipulation of dismissal with prejudice, even though he has no claims against Aviva Life or Aviva USA and will suffer no prejudice as a result thereof. Because Steffenberg and Aviva Life have been forced to file the instant motion, reasonable costs and attorneys' fees should be assessed against Scoll.

WHEREFORE, for the reasons stated above and in the accompanying memorandum, the Plaintiff, Elizabeth R. Steffenberg and the Defendant, Aviva Life Insurance Company, respectfully request that this Honorable Court:

(1) Allow this motion and dismiss with prejudice all claims against Aviva Life Insurance Company and Aviva USA Corporation in this action;

(2) Order that Defendant David M. Scoll pay to the Plaintiff, Elizabeth R. Steffenberg and the Defendant, Aviva Life Insurance Company, their costs and reasonable attorneys' fees incurred in the preparation, filing and hearing of this motion.

REQUEST FOR A HEARING

The Plaintiff, Elizabeth R. Steffenberg ("Steffenberg") and the Defendant, Aviva Life Insurance Company ("Aviva Life") jointly request a hearing on their Joint Motion to Dismiss.

ELIZABETH R. STEFFENBERG

AVIVA LIFE INSURANCE COMPANY

By her attorneys,

By its attorneys,

/s/ Christine Collins
Louis M. Ciavarra, BBO #546481
Christine S. Collins, BBO #639293
Bowditch & Dewey, LLP
311 Main Street, P. O. Box 15156
Worcester, MA 01615-0156
(508) 926-3441

/s/ Rhonda Rittenberg
Rhonda R. Rittenberg, BBO #550498
Joshua A. Lewin, BBO #658299
Prince, Lobel, Glovsky & Tye LLP
585 Commercial Street
Boston, MA 02109
(617) 456-8000

DATED: May 6, 2005